FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2871 OF 2006
IN
SUIT NO.4913 OF 2000

Majid Ahmed Oomerbhoy)..Plaintiff
V/s.
Rashid Sattar Oomerbhoy & Ors.)..Defendants

Ms.Manjiri Shah i/by M/s.Thakore Jariwalla ASS for the plaintiff.

Mr.S.J.Kadam i/by S.Mahomedbhai & Co. for defendant nos.2, 3, 4(a) & 4(c).

Mr.Jai Chinai with Mr.Sanjay Jain, Ms.T.A.Suria i/by S.K.Srivastav & Co. for defendant no.1.

Mr.D.V.Deokar 1st Assistant to Court Receiver present.

Mr.C.B.Bhogaonkar 2nd Assistant to Court Receiver present.

Coram : R.S.Mohite,J

Date : 6.11.2006.

PC

1. This Notice of Motion has been taken out by the original plaintiffs for various reliefs. Prayer clauses-(a) and (b) seek relief against respondent nos.1, 2, & 3 who are not parties to the original suit. Respondent no.1 is the Court Receiver. Respondent nos.2 & 3 are the Union of India and Reserve Bank of India. What is sought is that they should make all necessary enquiries and investigations in relation to the actions of defendant nos.1 to 3 and 4(a) to 4(c) in relation to the registration of the POSTMAN trademark in the name of an Offshore Company by the name of Quadrant Enterprises Pvt.Ltd., based in Singapore and

to take appropriate action in the matter against defendant nos.1 to 3 and 4(a) to 4(c) or any one or more of them as may be found guilty of having violated any provisions of the Foreign Exchange Regulation Act (FERA) and/or Foreign Exchange Management Act (FEMA) or any other provisions of law. Similar direction to respondent nos.1, 2, & 3 to make necessary enquiries and investigations is sought in relation to the permission granted to the suit firm to carry on business of trading under the trademark of the suit firm through M/s.Al-Shiravi Enterprises (Dubai) and/or other company acting allegedly as a Sole selling Agent of the suit firm and to take appropriate action in the matter against the defendants who may be found guilty of having violated any provisions of the Foreign Exchange Regulation Act (FERA) and/or Foreign Exchange Management Act (FEMA).

2. In my view, the aforesaid two prayers cannot be granted in the suit as passing such a direction would amount to initiating an enquiry to gather facts and to conduct enquiries and investigations on the basis of unsubstantiated allegations of violation of law.

3. The plaintiff then press prayer clause-(c) which seeks a direction to defendant nos.1 to 3 and 4(a) to 4(c) to place before this Court all documents and correspondence entered into by them with 5 foreign parties i.e. M/s.Unitata Berhad, M/s.Al-Shiravi

Enterprises (Dubai), M/s.Al-Shiravi Contracting and Trading Company, M/s.Quadrant Enterprises Pvt.Ltd., and M/s.Arabian Oasis Foods Company. There is also a general direction sought in the aforesaid terms against any other Company with which the said defendants have been dealing as regards the POSTMAN and/or any other Trade Mark of the firm. In so far as this part of prayer clause-(c) is concerned, the Counsel for defendant no.1 as well as Advocate appearing for defendant nos.2, 3, 4(a) and 4(c) made a statement that these defendants do not have in their possession or control any original or copy of the documents or correspondence entered into by them with the five named foreign parties as detailed aforesaid except those which are part and parcel of the record of the suit and proceedings therein. The statement is accepted. In the circumstances, the aforesaid prayer cannot be granted. It may also be mentioned here that the same prayer was also made in Notice of Motion No.2841 of 2001 which was heard and finally decided by this Court (D.K.Deshmukh,J) on 23.7.2004. This prayer was also not granted when the said Notice of Motion was decided. The later part of prayer clause-(c) seeks a direction against defendant nos.1 to 3 & 4(a) to 4(c) to file a detailed affidavit in this Court setting out the true nature of the transactions entered into by them with the aforesaid foreign parties by placing all documents including but not restricted to accounts, agreements, correspondence relating thereto on record.

4. On perusing the reply which has been filed in this motion, I find that there is no absolute denial on the part of the defendants that they have not entered into any transaction with foreign parties. Counsel for defendant no.1 and Advocate for defendant nos.2, 3, 4(a) and 4(c) state that whatever transactions their clients remember have been disclosed in affidavits filed earlier in the various earlier proceedings in the suit. This statement is also accepted. In the circumstances, there is no question of granting later part of prayer clause-(c). Prayer clause-(d) is in the nature of final relief and is against a third party which is not a party to the suit. In the circumstances, I am not inclined to grant there prayers in this Notice of Motion.

5. It was sought to be argued on behalf of the plaintiff that the defendants were concealing facts from the Court and that the plaintiffs have been able to procure agreements/documents signed by defendant nos.1 & 3. It is made clear that if indeed there are some such documents, then it will be open for the plaintiffs to take appropriate action according to law on the basis of the same in consonance with the permission earlier granted by this Court. However, the Court Receiver is directed to furnish copies of the Court Receiver’s report filed in compliance with the order dated 30.11.2001 passed in Notice of Motion

No.2841/2001 to all parties within a period of 3 weeks from today. Notice of Motion stands disposed off accordingly.

(R.S.Mohite,J)